

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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**NOV 20 1996**

FEDERAL COMMUNICATIONS COMMISSION  
STATION OF RECORD

In the Matter of )

Preemption of Local Zoning )  
Regulation of Satellite Earth )  
Stations )

IB Docket No. 95-59

To: The Commission

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COMMENTS  
OF  
THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

NATIONAL RURAL  
TELECOMMUNICATIONS COOPERATIVE

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Dated: November 20, 1996

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**COMMENTS  
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THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE**

Pursuant to Section 1.429 of the Rules and Regulations of the Commission, the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits these Comments in response to the Petitions for Reconsideration and Clarification ("Petitions") filed by third parties concerning the Commission's Report and Order ("Order"), Memorandum Opinion and Order, and Further Notice of Proposed Rule Making ("Further Notice") in the above-captioned proceeding.<sup>1/</sup> Specifically, NRTC echoes the support for the Commission's preemption rules which was expressed in all the Petitions. Additionally, we urge the Commission to clarify and strengthen the rules in several respects.

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<sup>1/</sup> Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rule Making, released August 6, 1996.

## **COMMENTS**

1. The Commission acted wisely in developing its rules to implement Section 207 of the Telecommunications Act of 1996. Section 207 calls for the preemption of any restrictions that “impair” a viewer’s ability to receive programming via DBS antennas. NRTC agrees with and supports the actions taken by the Commission in its Report and Order.

2. Likewise, NRTC applauds the Commission’s decision to extend the benefits of preemption to protect viewers against both governmental and non-governmental restrictions. In NRTC’s experience, non-governmental restrictions can sometimes present even greater obstacles than governmental restrictions on a viewer’s ability to receive video programming via DBS antennas. Therefore, the Commission’s decision to preempt both governmental and non-governmental restrictions removes a significant roadblock from the pathway to true competition in the video programming marketplace.

3. As noted by many participants in their Petitions, however, the Commission may have inadvertently created a means by which a local governmental or non-governmental authority could circumvent the preemption policy through the exclusion provided for “clearly defined safety objectives”. See, e.g., Consumer Electronics Manufacturers Association, at 4. NRTC urges the Commission to provide more specific

guidance concerning the extent to which clearly defined safety objectives may be used to justify restrictions against DBS antennas. NRTC agrees with DIRECTV and SBCA that, without more specific guidance, some entities might be tempted to disguise existing, otherwise unlawful restrictions as "safety objectives." DIRECTV at 10; SBCA at 12. NRTC also agrees with BellSouth Corporation that safety matters are for governmental authorities to determine, not non-governmental entities. BellSouth at 14. Therefore, NRTC believes that the safety objectives exclusion should only be available to governmental entities. Finally, NRTC shares the concern of the Consumer Electronics Manufacturers Association ("CEMA") that the Commission clearly state that appearance is not a valid reason for imposing a safety objective restriction. CEMA at 4.

4. NRTC also shares the concern expressed by many participants that the Commission's well-crafted preemption policy will not be consistently applied unless and until the Commission exercises its exclusive jurisdictional authority. See, e.g., Philips Electronics, N.A. Corporation at 7. NRTC agrees with BellSouth, DIRECTV and others that if state and local courts are allowed to apply the FCC's preemption rules, then viewers will be treated in a disparate manner from state to state, and even from locality to locality. BellSouth at 18; DIRECTV at 14. In an era when video programming is capable of delivery via satellite to a nationwide market, viewers in one state or one locality should be entitled to receive the same programming as viewers

elsewhere. Only by exercising its exclusive jurisdiction will the FCC ensure the development and application of a uniform, national preemption policy.

5. In their Petitions, SBCA and DIRECTV urged the Commission to prohibit a governmental or nongovernmental entity from assessing a fine or other penalty if a restriction against DBS antennas is upheld. DIRECTV at 11; SBCA at 14. NRTC agrees with SBCA and DIRECTV that consumers should be given up to 21 days in which to comply with the regulation once it is deemed to be valid. Otherwise, consumers may well be reluctant to risk obtaining programming via DBS antennas -- even where an invalid restriction is imposed -- and to challenge such a restriction if they are subject to unreasonable fines for noncompliance.

### **CONCLUSION**

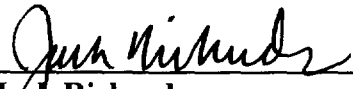
NRTC applauds the Commission for adopting rules which will permit viewers to finally receive programming via DBS antennas, despite local governmental and non-governmental restrictions to the contrary. NRTC believes that the Commission need only fine-tune its rules in order to promote development of a consistent national preemption policy.

**WHEREFORE, THE PREMISES CONSIDERED**, the National Rural Telecommunications Cooperative urges the Commission to consider these Comments and to revise its rules in accordance with the views expressed herein.

Respectfully submitted,

**NATIONAL RURAL  
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**Dated: November 20, 1996**

## **CERTIFICATE OF SERVICE**

I, Jennifer M. Cardin, a legal secretary with the law firm of Keller and Heckman LLP hereby certify that I mailed copies of Comments of The National Rural Telecommunications Cooperative this 20<sup>th</sup> day of November 1996, to:

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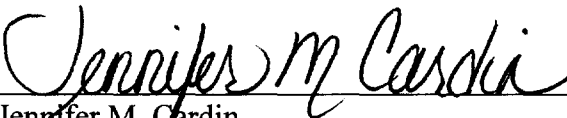
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